

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

\_\_\_\_\_)  
In the Matter of Petition for Rulemaking )  
of the Telecommunications Resellers )  
Association to Eliminate Comity-Based )  
Enforcement of Other Nations' )  
Prohibitions Against the Uncompleted )  
Call Signaling Configuration of )  
International Call-Back Service )  
\_\_\_\_\_)

RM-9249

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**OPPOSITION OF TELKOM SA LIMITED**

**I. INTRODUCTION**

Telkom SA Limited ("Telkom"),<sup>1</sup> through undersigned counsel, hereby respectfully opposes the Petition for Rulemaking, RM-9249 (the "Petition"), of the Telecommunications Resellers Association ("TRA"). The Petition asks the Federal Communications Commission to abandon its policy of requiring call-back<sup>2</sup> providers to offer their services in a manner consistent with the laws of the countries in which they operate. TRA instead would have the Commission ignore violations of other countries' legal requirements.

TRA's Petition should be denied. In 1994 and again in 1995, after much comment and analysis, the Commission concluded that, while call-back is permissible under U.S. law and advances important policy goals, call-back providers must offer their

<sup>1</sup> Telkom is the leading provider of telecommunications services in South Africa. Telkom was state-owned until 1997, when 30% of its equity was sold to Thintana Communications L.L.C., 60% of which is indirectly held by SBC Communications Inc. and 40% of which is indirectly held by Telekom Malaysia Barhad.

<sup>2</sup> By "call-back," we mean, as does the Petitioner, uncompleted call signaling, and not the "hot line" or "pooling" methods of providing call-back services.

services in a manner that is consistent with the laws of the countries in which they operate. Nothing has occurred in the last three years that would justify a reversal of the Commission's call-back policy, and TRA's Petition is a baseless effort to have the Commission revisit these matters yet again.

Contrary to TRA's claims, adoption of the World Trade Organization Basic Telecom Agreement<sup>3</sup> has strengthened rather than weakened the basis for the Commission's requirement that call-back providers offer their services in a manner consistent with the laws of the countries in which they operate. The Commission arrived at this requirement by weighing call-back's potential benefits against the principle of – and benefits to the United States of – international comity, and concluded both times that international comity was more important. If the Commission were to revisit this issue and again try to balance call-back against international comity, the Commission would find that the balance had tilted even more heavily toward international comity. The benefits that call-back once promised – market opening and international collection rate reductions – are now occurring under the WTO Basic Telecom Agreement without disruptive and destabilizing side effects. At the same time, international comity is more significant today than in 1994 and 1995, in light of 69 nations, including the United States, having concurred on a transition to open markets in the WTO Basic Telecom Agreement. TRA's Petition thus should be denied.

## **II. ARGUMENT**

### **A. The Commission has twice before concluded that call-back providers must offer their services in a manner that is consistent with the laws of**

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<sup>3</sup> World Trade Organization: Agreement on Telecommunications Services (Fourth Protocol to General Agreement on Trade in Services), 36 I.L.M. 354 (1997).

**the countries in which they operate, and consideration of this issue for a third time would be a waste of Commission resources.**

The Commission should not reexamine its requirement that call-back providers offer their services in a manner that is consistent with the laws of the countries in which they operate. The Commission thoroughly considered this matter in 1994 in the *Call-Back Order*<sup>4</sup> and again in 1995 in the *Call-Back Reconsideration Order*.<sup>5</sup> Before issuing both the *Call-Back Order* and the *Call-Back Reconsideration Order*, the Commission received comments from the petitioner in this proceeding, TRA, as well as from providers of call-back services and U.S. and foreign carriers. In connection with the *Call-Back Reconsideration Order*, the Commission also solicited the views of the Department of Justice and the Department of State. Based on these well-developed records, the Commission prepared two detailed orders that weighed the promised public interest benefits of call-back against international comity concerns, and correctly concluded both times that call-back providers must offer their services in a manner that is consistent with the laws of the foreign countries in which they operate. Revisiting this matter for a third time would be a waste of Commission resources. The Commission thus should reject TRA's Petition as an attempt to relitigate yet again a matter in which TRA participated and did not prevail.

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<sup>4</sup> *VIA USA, Ltd Telegroup, Inc. Application for Authority Under Section 214 of the Communications Act of 1934*, 9 FCC Rcd. 2288 (1994) ("Call-Back Order").

<sup>5</sup> *VIA USA, Ltd Telegroup, Inc. Application for Authority Under Section 214 of the Communications Act of 1934*, 10 FCC Rcd. 9540 (1995) ("Call-Back Reconsideration Order").

**B. TRA's sole basis for asking the Commission to reconsider its current call-back policy – adoption of the WTO Basic Telecom Agreement – strengthens the rationale for the current call-back policy.**

TRA's only asserted basis for asking the Commission to reconsider again this settled issue is the adoption and entry into effect of the WTO Basic Telecom Agreement. Contrary to TRA's Petition, however, the WTO Basic Telecom Agreement strengthens, rather than weakens, the Commission's conclusion that, while call-back services may advance important policy goals, call-back services may not be provided to countries that have clearly and explicitly prohibited this offering. The WTO Basic Telecom Agreement provides an alternative means to advance the same important policy goals as call-back, and international comity concerns weigh more heavily in view of the WTO Basic Telecom Agreement into which the United States and 68 other countries have entered. The Commission therefore should retain its current call-back policy.

- i. **The WTO Basic Telecom Agreement is leading to competition in international telecommunications markets, as call-back once promised to do, but without disruptive and destabilizing side effects.**

The WTO Basic Telecom Agreement is now leading to competition in international telecommunications markets far more effectively than the proliferation of call-back services once promised to do. Call-back's pro-competitive role is thus less significant, and weighs less heavily opposite international comity concerns, today than it did prior to adoption of the WTO Basic Telecom Agreement.

In concluding that call-back advances the public interest, the Commission said that call-back leads to increased competition<sup>6</sup> and puts pressure on foreign monopoly

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<sup>6</sup> *Call Back Order*, ¶ 10.

carriers to reduce their collection rates, which stimulates foreign-billed demand, reduces the U.S. traffic imbalance, U.S. settlement net payments, and U.S. carriers' average net settlement costs per minute.<sup>7</sup> The Commission also has noted that, prior to the WTO Basic Telecom Agreement, call-back and other services that "take advantage of price arbitrage opportunities" were then one of the few ways in which to "increas[e] competitive pressures in foreign markets."<sup>8</sup>

With the WTO Basic Telecom Agreement, 69 nations that account for more than 90 percent of worldwide telecommunications services revenues agreed to replace "the traditional regulatory regime of monopoly telephone service providers with procompetitive and deregulatory policies" based on "the principles of open markets, private investment and competition."<sup>9</sup> Thus, U.S. companies will be able "to enter previously closed foreign markets and develop competing networks for local, long distance, wireless and international services," and the Commission will be able "to prevent anticompetitive conduct in the provision of international facilities or service by relying on more effective and targeted safeguards."<sup>10</sup>

As a result of the WTO, in South Africa, for example, exclusivity rights for public switched telecommunications services will end no later than 2003, resale rules are to be liberalized between 2000 and 2003, and foreign ownership of up to 30% of the equity of

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<sup>7</sup> *Call-Back Order*, ¶ 27.

<sup>8</sup> *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd. 3146, ¶¶ 21, 22 (1996) ("*International Accounting Rate Reform*").

<sup>9</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, 1997 WL 735476, ¶¶ 2, 4 (rel. Nov. 26, 1997) ("*Foreign Participation in the U.S. Telecommunications Market*").

<sup>10</sup> *Id.*, ¶¶ 4, 11.

telecommunications providers is now permitted.<sup>11</sup> In addition, the market for value added network services has been liberalized, as has the market for customer premises equipment. Two cellular licensees, both of which have foreign equity investors, already are in competition, and a third cellular license is to be awarded by the end of 1998. Also, a new and independent South African Telecommunications Regulatory Authority has been created, along with a Universal Service Agency.

Call-back thus is no longer among the only means for forcing open other countries' telecommunications markets and promoting competition. With the WTO Basic Telecom Agreement now having moved the world to that same position, the potential benefits of call-back have diminished and must weigh less heavily against principles of international comity when formulating policy toward call-back service providers.

**ii. The WTO Basic Telecom Agreement has magnified the importance of international comity.**

While the WTO Basic Telecom Agreement has diminished the significance of call-back's pro-competitive potential, the WTO Basic Telecom Agreement also has further magnified the importance of international comity. Even in 1994 and 1995, when call-back and other services that "take advantage of price arbitrage opportunities" were one of the few ways in which to "increas[e] competitive pressures in foreign markets"<sup>12</sup>

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<sup>11</sup> SBC Communications Inc. indirectly holds 60%, and Telekom Malaysia Berhad indirectly holds 40%, of the equity of Thintana Communications L.L.C., which holds 30% of the equity of Telkom.

<sup>12</sup> *International Accounting Rate Reform*, ¶¶ 21, 22.

and combat “price distortions in monopoly-based markets,”<sup>13</sup> the Commission still respected international comity and required call-back providers to offer their services in a manner consistent with the laws of the foreign countries in which they operate. As the Commission wrote, “we recognize that foreign governments face unusual difficulties in giving effect to their laws and regulations barring uncompleted call signaling,” and “[w]e would expect no less from foreign governments in a comparable context.”<sup>14</sup>

International comity is even more important today because of the WTO Basic Telecom Agreement. Under this “historic agreement,” the United States and 68 other countries that “represent[] 90 percent of the \$600 billion global market for telecommunications services” have agreed, as the United States sought, “to open markets for basic telecommunications services around the world,” and, in most cases, “to observe a set of pro-competitive regulatory principles that closely follow the Congressional vision of free competition, fair rules and effective enforcement enacted in the Telecommunications Act.”<sup>15</sup> In return, however, the United States has agreed to a *gradual* reform of the “antiquated system for delivering international services,”<sup>16</sup> in which each country takes market-opening measures according to individualized timetables that reflect the particular circumstances in each country. Illegal call-back services threaten the timetables for market liberalization that are part of the WTO Basic Agreement – the sudden increased competition and downward pressure on foreign

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<sup>13</sup> *Call-Back Order*, ¶ 49.

<sup>14</sup> *Id.*, ¶ 50.

<sup>15</sup> *Foreign Participation in the U.S. Telecommunications Market* (Statement of Chairman Kennard).

<sup>16</sup> *Id.*

collection rates that result from call-back could destroy some countries' carefully crafted plans for gradual and orderly market liberalization, together with privatization, infrastructure development and rate rebalancing. Tolerance of illegal call-back services thus would be an end-run around the WTO Basic Telecom Agreement, as the timetables for gradual reform, in which the United States concurred, are undermined by illegal call-back services.

In South Africa, for example, the government granted the newly-privatized Telkom a five-year period of exclusivity ending in 2002 to provide international services and other public switched telecommunications services.<sup>17</sup> Thereafter, competition will be permitted. In return for this period of exclusivity, Telkom has agreed to meet aggressive investment and universal service goals:

- Telkom must add 2,690,000 new lines over the five-year period, including 1,676,000 lines in underserved areas. (There were only 4,260,000 telephone lines in South Africa as of March 31, 1997).
- Telkom must provide telephone service to 3,204 villages that never before had telephone service.
- Telkom must add 120,000 new payphones.

Telkom is also upgrading from manual and electromechanical exchanges to an all-digital network, improving customer service, and undertaking aggressive economic empowerment and social investment programs. Illegal call-back services could deprive Telkom of revenues needed to accomplish these goals and disrupt the opening of the South African telecommunications market.

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<sup>17</sup> Under certain circumstances, including even greater investments in infrastructure development, the period of exclusivity can be extended to 2003.



Commission tolerance of illegal call-back services not only would offend international comity by threatening the timetables for market liberalization in which the United States concurred, but also would be an affront against other countries' legal systems that are open to complaints from call-back providers about restrictions on call-back. In South Africa, for example, the South African Call Back Association and ten call-back operators have filed an application for review by the High Court of South Africa of an order of the South African Telecommunications Regulatory Authority that declared that carrying on call-back operations constituted an offense under the South African Telecommunications Act. If call-back providers want to debate whether call-back services are or should be illegal in a given country, that country's legal and political forums are the proper focus. The Commission should not be placed in the position of second-guessing those legal decisions, particularly not decisions endorsed by the United States through the WTO.

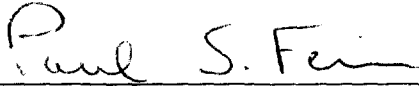
Tolerating illegal call-back services, then, would be a double affront against international comity. The authority of South Africa's and other countries' legal systems to respond to complaints about regulation of call-back and of their governments to set basic telecommunications policy would be subverted, and the timetable for market liberalization in South Africa and other countries, endorsed through the WTO process, would be undermined. These international comity concerns are far weightier than those that the Commission considered in 1994 and 1995 and found sufficient to require call-back providers to offer their services in a manner consistent with the laws of the foreign countries in which they operate.

### III. CONCLUSION

TRA's petition should be denied. The Commission twice before has addressed whether it should ignore violations of other countries' laws on call-back services, and twice before concluded that it should not do so because of principles of international comity. Revisiting this issue for a third time would be a waste of Commission resources. Even if the Commission were to do so, however, the Commission would find that the only significant event since it last addressed this issue -- adoption of the WTO Basic Telecom Agreement -- militates toward continued enforcement of the requirement that call-back providers offer their services in a manner consistent with the laws of the countries in which they operate. The WTO Basic Telecom Agreement is performing the same market-opening function that call-back services once promised -- without the disruptive, destabilizing effects on individual countries -- and international comity concerns are more important in light of 69 nations entering into the WTO Basic Telecom Agreement and agreeing to the individualized timetables for transitioning to open markets that are set forth in each country's commitment.

Respectfully submitted,

**Telkom SA Limited**

By:   
Richard M. Firestone  
Paul S. Feira  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, D.C. 20004  
(202) 942-5820

*Its Attorneys*

May 1, 1998

## **CERTIFICATE OF SERVICE**

I, Paul S. Feira, hereby certify that copies of the following documents were mailed this 1st day of May, 1998, by hand delivery or United States First Class mail, postage prepaid, to the following:

William Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Harold Furchtgott-Roch  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Michael Powell  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Gloria Tristani  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

Ari Q. Fitzgerald  
Legal Advisor to the Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Kevin Martin, Legal Advisor to  
Commissioner Furchtgott-Roth  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

James Casserly, Legal Advisor to  
Commissioner Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Kyle D. Dixon, Legal Advisor to  
Commissioner Powell  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Paul F. Gallant, Legal Advisor to  
Commissioner Tristani  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

Regina M. Keeney, Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Roderick K. Porter, Deputy Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

James L. Ball  
Associate Chief, Policy  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Mindy Ginsburg  
Associate Bureau Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Peter C. Pappas  
Associate Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Robert Calaff, Senior Counsel  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Rebecca Arbogast  
Senior Legal Advisor  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Diane J. Cornell, Chief  
Telecommunications Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Mindel De La Torre, Deputy Chief  
Telecommunications Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

George Li, Deputy Chief  
Telecommunications Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Troy Tanner, Chief  
Policy and Facilities Branch  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Thomas Wasilewski, Chief  
Multilateral & Development Branch  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Richard B. Engleman, Chief  
Planning and Negotiations Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Larry W. Olson, Deputy Chief  
Planning and Negotiations Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Thomas M. Alberg, Legal Advisor  
Planning and Negotiations Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Linda Dubroff, Legal Advisor  
Planning and Negotiations Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

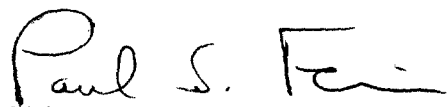
Charles C. Hunter  
Catherine M. Hannan  
Hunter Communications Law Group  
1620 I Street, N.W., Suite 701  
Washington, D.C. 20006

International Reference Room  
International Bureau  
2000 M Street, N.W., Room 102  
Washington, D.C. 20554

James Ballis, Chief  
Notifications Branch  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Pamela Geer, Chief  
Negotiations Branch  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

International Transcription Services, Inc.  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036



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Paul S. Feira